

community, the Legislature has attempted to impose upon a municipal corporation

all such further sums as shall be necessary to acquire such property as the road and transit commission may determine to be necessary for the proper construction, operation or maintenance of the road, and such further sums as will be sufficient to pay all damages sustained by anyone in consequence of such construction, operation and maintenance of the road.

**BUT THE CITY WOULD HAVE TO PAY.**

"The statute itself, while contemplating the payment of many sums by the city, does not provide no salaries for the prevention of

"In two cases there has been presented to the Court of Appeals the question as to the construction to be given to this phrase 'city purposes' in the constitution, and it seems to me that if we are to, and

"Article VIII., sec. 10, of the Constitution was adopted at the same time as the provision in question, and it was there provided: 'Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation, or private undertaking.' This provision might not preclude the State from building a railroad, which would be clearly a public use; but when the prohibition relates to the credit of the State, the State is precluded for the purposes of local government, the language

for the same allowed. After the passage of the act of 1874, the constitutional provision which has been quoted above has been the subject of further question. It was presented to the court, under that provision, whether the building of this bridge was a city purpose. That question was, as stated by Judge Finch, in another opinion, ably argued and frankly decided. The building of the bridge was held to be a city purpose, and the ruling was put upon the ground that it had always been the policy of the State, for two towns, separated by a stream of water,

is in the same sense as an ordinary street or highway is within the purpose for which highways are ordinarily created by a city, it clearly is public use.

It is quite true that in a certain sense a railroad is a public purpose for which the right of eminent domain may be exercised and the franchise of which is a public franchise. But it is clear that it cannot be said to be a highway in the sense in which ordinary highways and streets are said to be such. An ordinary highway is given to the public as a right of passage, with

"For these reasons, in addition to those stated by Judge Ingraham, I am compelled to assent from the majority of the court."